IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3439 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T CORPN

Versus

AHMADMIYA NIZAMMIYA CHAVDA 3RD SPECIAL LAND ACQUISITION

Appearance:

1. Special Civil Application No. 3439 of 2000

MR ASHISH M DAGLI for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 30/01/2002

ORAL JUDGEMENT

The present petition is filed by Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation") challenging the judgement and award of

the Labour Court, Nadiad in Reference (LCN) No.174 of 1997 dated 8.9.1999. The learned Member was pleased to award full back wages from the date of dismissal, i.e. 29.11.1996 to 31.1.1998, as the respondent workman-driver had reached the age of superannuation in January 1998. It is observed by the learned Judge that the question of reinstatement does not arise because the respondent workman has already attained the age of superannuation on 31.1.1998.

2. The case of the petitioner corporation is that the respondent workman while serving as driver was driving the Bus on 5.2.1984, met with an accident with a scooter in which including the driver of the scooter two pillion riders died. The factor which weighed with the learned Judge of the Labour Court is that there were three persons on the scooter instead of two. Further the respondent workman is acquitted in the criminal case. The respondent workman was not the sole contributory to the accident, even the scooter driver was guilty of contributory negligence.

3. On the last date when the matter was heard, the details of the Motor Accident Claim(s) arising from the said accident were sought for. Learned advocate Mr.Daghli appearing for the petitioner corporation submitted that from the said accident as many as four Motor Accident Claim Petitions were filed in which a total amount of Rs.3,90,676/-, is awarded. What is more important is that the Motor Accident Claim Tribunal has held the ST Driver 100% negligent for the accident in question. In light of that the factor which is relied upon by the learned Judge of the Labor Court, namely, the respondent workman is acquitted in the criminal case loses its significance. The judgement and award of the Labor Court is dated 8.9.1999. It would have been in fitness of things if the learned Judge of the Labour Court was informed of the award in Motor Accident Claim Petitions or he himself had called for his information and should have taken into consideration the same being most relevant material. Only because there is some observation of the reporter that had the scooterist not tried to overtake, had the driver of the ST bus taken his bus towards left the accident would have been averted cannot be relied upon for drawing the final conclusion on the aspect of contributory negligence. The Motor Accident Claims Tribunal which has examined the issue on appreciation of the evidence much in detail and has then recorded its finding holding the ST driver guilty of 100% negligence. In view of that the judgement and award of the Labour Court is required to be quashed and set aside.

4. At this juncture, learned advocate Mr.Rathod appearing for the respondent workman relied upon the judgement of the Supreme Court in the matter between Karnataka State Road Transport Corporation v. B.S. Hullikatti, reported in A.I.R. 2001 SC 930, wherein the Apex Court was pleased to take a lenient view in the matter. Mr.Rathod submitted that as was done by the Honourable the Supreme Court the respondent workman may not be deprived of the retiral benefits.

5. Taking into consideration the fact that the respondent workman had put in 20 years of service with the respondent corporation in which there were only two incidents of accidents that too of minor nature. Taking into consideration that depriving the respondent workman of his retiral benefits will be too harsh a penalty, it is deemed fit that the respondent workman may not be deprived of his retiral benefits.

6. The petition is partly allowed. The judgement and award of the Labour Court, Nadiad in Reference (LCN) No.174 of 1997 dated 8.9.1999 is quashed and set aside to the extent it orders for payment of full back wages from 29.11.1996 to 31.1.1998. However, it is directed that the respondent workman be paid his retiral benefits treating him to have retired on the date of dismissal i.e. 29.11.1996. Rule is made absolute to the aforesaid extent only. No order as to costs.

(Ravi R. Tripathi, J.)

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